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Current Topics.

Mr. Justice Crossman.

WE record, with deep regret, the death of CROSSMAN, J., which took place at Tetbury, Gloucestershire, on 1st January. The late judge was born in 1870 and was educated at Winchester and New College. He had a distinguished academic career, taking a first-class in Mods. in 1891 and first class in Litt. Hum. in 1893. He was Hertford Scholar in 1890. For a short time he was an assistant master at Winchester. Called to the Bar by Lincoln's Inn in 1897, he obtained a large practice and was appointed junior equity counsel to the Board of Inland Revenue in 1926, and junior equity counsel to the Treasury and the Board of Trade in 1927. He was also counsel to the Royal College of Physicians. In January, 1934, he was raised to the bench, taking LORD MAUGHAM'S place as a judge in the Chancery Division. The obituary notice in *The Times* states that his law on the bench was as sound as it had been during the long period he had been engaged in the best class of Chancery work at the Bar, that he was courteous to the Bar and pleasant in his personal relationships. Readers will fully endorse this estimation of his work and character.

Hilary Law Sittings.

THE figures for the Hilary Law Sittings, which begin on Monday, show substantial decreases in the number of cases set down for hearing, compared with those for the corresponding term last year. Appeals to the Court of Appeal have fallen from 108 to sixty, of which eight are interlocutory. Of the final appeals, six are from the Chancery Division, twenty-seven from the King's Bench Division. There is one Admiralty appeal and eighteen are from the county courts, including ten under the Workmen's Compensation Act. The total for the Chancery Division is seventy-five, compared with 160 last year. FARWELL and BENNETT, JJ., will deal with the twenty-four actions in the Non-Witness List; SIMONDS and MORTON, JJ., with the thirty-three causes in the Witness List. Assigned and Retained Matters number eighteen. There are sixty-four company matters, which will come before SIMONDS, J., and four appeals and motions in bankruptcy. Appeals to the Divisional Court number ninety-one, a decrease of sixteen compared with last year's figure. The Divisional Court List contains fifty-three cases, the Special Paper nine, and the Revenue Paper twenty-one. Corresponding figures for Hilary Term, 1940, were forty-five, eleven and thirty-five respectively. There are seven appeals under the Housing Acts and one motion for judgment. Cases coming before the King's Bench Division for original hearing total 367. Last year the corresponding figure was 696. The Lists contain three special jury actions, one common action, ninety-eight long non-jury actions, and 246 short non-jury actions. There are eleven commercial cases, eight fewer than last year, and eight short causes, compared with twelve a year ago. Seven Admiralty actions have been set down for hearing. There are 933 divorce cases, compared with 1,829 last year.

Bar Council: Annual Statement.

THE annual statement of the Bar Council, which, owing to the war and the absence of many members of the Bar on war service, and also with a view to saving expense, is not being circulated as usual, recalls that the council, in conjunction with The Law Society, pressed for a modification of the National Service (Armed Forces) Miscellaneous Regulations, 1939 and 1940, issued under the Military Training Act, 1939, by which applicants to hardship committees for postponement of military service were not permitted to be represented by counsel or solicitor. It is pointed out that in the later regulations an applicant was given the right to be so represented in cases before the umpire or before a local or appellate tribunal, and in certain cases before a committee. In the course of the year the Bar Council was asked to make representations with a view to aliens being entitled to be represented professionally before aliens' tribunals. The council, however, decided not to do so because of the very special nature of these purely administrative bodies. The statement mentions an application from a firm of solicitors that a barrister might be permitted during the war to join their firm and work in their offices. The council replied that such a course, in addition to being contrary to No. 41 (3) of the Consolidated Regulations of the four Inns of Court, would be open to grave objection. The foregoing particulars have been selected from the statement, which has been curtailed this year in the interests of economy, as being matters of interest to the solicitors' branch of the profession. It may, however, be added that the council has published and screened a notice stating that, owing to the absence on war service of many of the junior counsel who usually take Poor Persons' cases, difficulty has been experienced in some places in finding counsel available for them. The council therefore urges members of the Bar not on war service to indicate to the Secretary, Poor Persons' Committee, Room 785, Royal Courts of Justice, W.C.2, their willingness to accept briefs in such cases. As was indicated in our last issue, the annual general meeting of the Bar will take place in the Old Hall of Lincoln's Inn on Friday, 17th January, at 2.30 p.m.

The Diplomatic Privileges (Extension) Bill.

THE object of the Diplomatic Privileges (Extension) Bill is, as the Lord Chancellor explained when the measure was before the House of Lords on second reading, to ensure to the Allied Governments established in this country and to associated national authorities established in this country, like the Free French movement, an appropriate and fitting status by assimilating their treatment in the matters of immunities and privileges to that enjoyed by Diplomatic Envoys. The legal position, LORD SIMON intimated, was that Sovereigns or heads of states of the foreign Governments as such already enjoy immunity, which was secured by rules of International Law and recognised by our own courts. Nobody would seek to bring an action against a foreign Sovereign or against a foreign Government as such. But that did not cover the ground and legislation was needed to provide for the conferring upon individual members of an

Allied Government and their official staffs the immunities and privileges to which their position and standing rightly entitled them. Legislation was also needed to cover the case of the Free French movement. The Bill met those requirements by proposing to confer a position corresponding to that of the Diplomatic Corps upon the members and the senior officials of the Allied Governments stationed in this country—the Governments of Poland, Norway, the Netherlands, Belgium, Luxembourg and the Provisional Czecho-Slovak Government—as well as upon the leaders and senior officials of recognised associated national authorities such as the Free French movement established in this country. LORD SIMON went on to indicate the distinction drawn in the measure between senior personnel and the more numerous minor clerical and subordinate staffs by limiting the grant of diplomatic privileges to officials performing duties not less responsible than those of a Diplomatic Secretary. The names of the individuals falling within the definition would be published in the official *Gazette*. The Bill also dealt with the case of foreign Diplomatic Envoys and their staffs accredited to the Allied Governments, but who were necessarily at present in this country because the Allied Governments were here.

County Councils and Billeting.

A RECENT writer to *The Times*, signing himself "A Local Government Officer," urges that the difficulties of evacuation and billeting, so far as the reception areas are concerned, are largely due to county councils never having been asked to participate actively in the work, except in connection with the reception of what he describes as panic refugees and in the vague and undefined capacity of co-ordinating authority. It is recalled that in 1938 county councils were made the billeting authorities and organised the evacuation scheme in the reception areas, working in close co-operation with the local councils. When the 1939 crisis occurred the Ministry of Health handled the matter on a regional basis and dealt directly with the borough and district councils which were made the billeting authorities. At the present county councils simply receive copies of some of the Ministry's circulars marked "for information." The writer continues: "When it is borne in mind (1) that the Ministry, in treating this problem regionally, are endeavouring to deal with a large number of authorities in a number of different counties, (2) that such authorities have normally only small trained staffs, and (3) that a county council is the education, poor law and maternity and child welfare authority for the greater part of its administrative area, it will be appreciated that the regional officers of the Ministry are attempting to do too much, the district councils have been given a task beyond their capacity (especially bearing in mind all their other work), while the county councils which possess the buildings, powers and staffs are left with nothing to do until the evacuees are billeted." Two of the effects of the present arrangements cited by the writer are that frequently children are billeted where there is not sufficient school accommodation and expectant mothers are sent to villages too far away from hospitals. It is therefore urged that the Ministry of Health should transfer the billeting powers to county councils, with instructions to use the councils of county districts as agents. This, it is claimed, would result in an authority, too large to be intimidated by local influence, administering compulsory powers of billeting and co-ordinating not only the billeting, but the educational, medical and poor law functions of local government.

War Damage: Business Premises.

A USEFUL leaflet (obtainable through local authorities or from the Regional Licensing Officers of the Ministry of Works and Buildings or from the Regional Officers of the Ministry of Health) has recently been issued by the Board of Trade concerning the repair of factories and other business premises damaged by enemy action. Firms requiring controlled building materials for first-aid repairs—an expression which will be strictly interpreted by local authorities to mean minimum repair necessary to make the structure safe and protect it against wind and weather—should, it is stated, apply to their local authorities, who will help them to obtain the necessary materials either through the Control or from other sources. The nature of the local authorities' duties in this regard was indicated in a recent paragraph in these columns. Firms which experience difficulty in obtaining supplies of materials for the time being uncontrolled, of which there may be a temporary shortage, should apply to their local authority, who will endeavour to put them in touch with a source of supply. The above is the normal procedure, but it is pointed out that firms engaged to an important extent on war production work may apply for assistance in obtaining all kinds of building materials to the Chairman of the Local Reconstruction Panel of their district, whose address can be obtained from the local authority. As regards other repairs, local authorities will not be of assistance, and application for any controlled material required must normally be made to the Ministry of Works and Buildings, though in the case of firms engaged on war production work the Local Reconstruction Panels will facilitate the execution of repairs sufficient to permit the resumption of production and, where necessary, will authorise the release of controlled materials for the purpose.

Rebuilding and Reconstruction.

As regards rebuilding or reconstruction, application must be made to the Ministry of Works and Buildings for a licence to build if the work is estimated to cost more than £500; and similar application must be made for these purposes for all controlled materials. It is emphasised that strict economy is necessary in the use of building materials and labour and that it is impossible to permit the rebuilding or repair—apart from first-aid repairs—of civil factories and other commercial buildings unless they can be regarded as of urgent national importance. In general, licences to rebuild or permission to obtain controlled materials for building, rebuilding or repairs will not be granted where other firms are available to produce goods equivalent to those made by the damaged concern unless the quantity of materials required is very small in relation to the size of the undertaking for which they are needed. Firms must therefore consider how far orders can be transferred from damaged or destroyed factories to other factories. Firms manufacturing for export, which cannot by their own efforts or those of any organisation to which they belong arrange for their export business to be carried on, should ask advice from the Export Group concerned. The leaflet also deals with the position in regard to repairs or replacements to machinery or plant. In many cases it will be possible to effect minor repairs or replacements without Government assistance. Where assistance is necessary, firms engaged to an important degree on war production should apply to the Chairman of the Local Reconstruction Panel for the district; firms engaged on food production should apply to the Priority Officer, Ministry of Food, Neville House, Page Street, London, S.W.1; and other firms should apply to the Industries and Manufactures Department, Board of Trade, Great George Street, London, S.W.1. In the third of these cases applicants should state the purpose for which the machinery or plant is required, and should supply any relevant information regarding the essential nature of the goods which it is proposed to produce and the possibility of using for the purpose other machinery or plant in possession of the owner or existing capacity of the industry. They should also state whether machine tools subject to the Machine Tool Control are included in the machinery and plant required, whether the supply is subject to the Machinery and Plant (Control) (No. 2) Order, 1940, whether the suppliers require an authorisation to obtain the necessary steel, and whether there has been any concurrent damage to buildings requiring other than first-aid repairs. In the last case firms should state whether an application has been made to the Ministry of Works and Buildings for a licence to rebuild or permission to acquire controlled materials.

Wanton Destruction.

ALTHOUGH among those outside the profession a matter which might be regarded as one of the very minor tragedies of the war, the wanton destruction by fire of a certain printing establishment which had in hand and practically ready for distribution one of the series of law reports cannot so be visualised by lawyers. Like so many other untoward occurrences consequent on the war, this no doubt is extremely irritating, but it can be borne, not indeed with complete equanimity, but at all events with philosophic calm, knowing as we do that the reports can be reproduced and made available for the profession a little later than usual. In the old days we recall that the German legists contributed richly to the literature of the law, and their works found many appreciative students in this country. One wonders what these old legists would think of their degenerate successors, who appear to find an insane delight even in the destruction of publications elucidating the law.

Rules and Orders: Land Charges.

THE attention of readers is drawn to the Land Charges (No. 2) Rules, 1940, the effect of which is to extend the number of days fixed by s. 4 (1) (*b*) of the Law of Property (Amendment) Act, 1926, from fourteen to twenty-eight. The rules are dated 20th December, 1940, and come into operation forthwith. They are set out in full on p. 23 of the present issue.

Criminal Law and Practice.

The Onus of Proof.

MUCH the most important rule in criminal law is that expressed in the Latin maxim "*semper praesumitur pro negante.*" This is the well-known presumption of innocence. It is the same as the frequently invoked principle that in order to secure a conviction the evidence for the prosecution must be such as not merely to show a probability of the defendant's guilt, but to leave no reasonable doubt of it (*R.* v. *Beale*, 8 Cr. App. R. 95).

In other words, the onus lies on the prosecution to establish its case beyond any reasonable doubt. By way of exception to this rule, it is well recognised now that there are cases in which the onus lies on the defendant to prove an affirmative, particularly in the case of crimes of omission where the facts would be peculiarly within the defendant's knowledge.

In one case it was apparently thought that the rule as to the onus of proof in criminal cases was wide enough to embrace even these cases. In *Over* v. *Harwood* [1900] 1 Q.B. 803, Channell, J., and Bucknill, J., agreed that the onus was on the prosecution to establish non-compliance with a vaccination order under s. 31 of the Vaccination Act, 1867. The court affirmed the conviction, however, in that case, because the fact that the proper officer had not been duly notified under the Act of the vaccination, was *prima facie* evidence of the non-vaccination of the child. The non-compliance with the order could not therefore be said to be peculiarly within the defendant's knowledge.

The burden of proving continual absence for seven years is laid on a defendant where the prosecution on a charge of bigamy proves the two marriages (*R.* v. *Curgenwen*, 1 C.C.R. 1). The burden then rests on the prosecution to prove that the defendant knew that his or her spouse was alive within the previous seven years (*R.* v. *Peake*, 17 Cr. App. Rep. 22). To take a further example, once it is proved by the prosecution that a person has practised medicine without a qualification, or sold game without a licence, it is for the defendant to prove that he possessed the requisite qualification or licence (*R.* v. *Turner*, 5 M. & S. 206).

A peculiar case of this sort came before the Divisional Court on 5th November, 1940, in *James* v. *O'Neill* (*ante*, p. 719). The charge was one under s. 3 of the Food and Drugs Act, 1938, under which it is an offence to sell to the prejudice of the purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality of the food or drug demanded by the purchaser. It was alleged that the defendant had, through his servant, sold milk adulterated with water, to the prejudice of the purchaser. Analysis showed a deficiency in non-fatty solids and 7 per cent. of added water.

The defendant successfully proved his innocence by calling witnesses to show that the milk was under observation from the time of milking until the moment when it was dispensed to the purchaser. The magistrates dismissed the information, and the prosecutor appealed.

The evidence was that the man employed by the respondent to look after his cows milked ten of them on the day preceding the date of the alleged offence. He made ten journeys from the cowshed to the dairy in order to pour the milk into a churn from the pail into which he milked. Both the pail and the churn were dry, and a dog just outside the dairy would have given warning if anyone had approached the dairy while the man was milking. The dairy was unheated, and it was contended on the respondent's behalf that the small amount of extra water was due to condensation inside the churn, which had been closed with an air-tight lid as soon as all the cows had been milked.

The churn was then put on a van and delivered to the respondent's salesman by the respondent, who drove the van. The salesman then bottled the milk in dry bottles, placed them in crates, and left them in the dairy adjacent to the respondent's premises. Between 8 p.m. on the day preceding the date of the alleged offence and 7 a.m. on the day of the alleged offence the dairy was unlocked and not under observation, but it could only be entered by a stranger if he jumped over a 6-foot wall. At 7 a.m. the caps on the bottles were intact and there was no sign of their having been tampered with. During delivery of the milk the salesman left the van for half a minute at the time of each delivery.

The Divisional Court upheld the justices' decision to dismiss the charge on the ground that there was no evidence to support it. They had found by their decision, said the Lord Chief Justice, that the milk when sold was the same as when drawn from the cow. The evidence for that, as against the gap of 8 p.m. to 7 a.m. in the hours of observation of the milk, was that the caps of the bottles were in the same condition at 7 a.m. as at 8 p.m. on the preceding day.

What the Divisional Court held, in effect, was that the defendant, having discharged the onus of proving his innocence to the satisfaction of the magistrates, could only be put in peril again if he had in fact tendered no evidence at all. The cases in which the onus of proof rests on the defendant in criminal trials are similar to those of *res ipsa loquitur* in civil proceedings. They may be said to consist of facts which raise a presumption of guilt, or of negligence, which the defendant must rebut. If he fails to call any evidence or calls evidence which fails to satisfy the court of his innocence, he fails to discharge the onus of proof which is placed upon him and must suffer the consequences.

War-time Charitable Trusts.

THE present war, like that of 1914–1918, inspires many benefactions, and it may be important to know whether they satisfy the legal definition of charity. It may be useful, therefore, to review the relevant authorities, classifying those which are concerned with charitable purposes related to war conditions. The War Charities Act, 1940 (3 & 4 Geo. 6, cl. 31), introduces many rules about registration and the powers of the Charity Commissioners and other bodies, but it does not purport to add anything to the legal meaning of charity, still less to give a definition of that difficult conception. For the purposes of the Act, "'war charity' means any fund, institution, association or undertaking, whether established before or after the passing of the Act, having for its sole or principal object or among its principal objects the relief of suffering or distress caused, or the supply of needs or comforts to persons affected by" the present, the previous, and possibly future wars "and *any other* charitable object connected with any such war" (s. 11 (1)). It seems to be assumed in this definition that a "war charity" must amount to a "charity" in the ordinary legal sense. And in any event it may be important, for reasons having nothing to do with the Act, that a war charity should satisfy the test of a good charitable purpose. The decided cases must be looked to.

Purposes Beneficial to the Armed Forces.

The "setting out of soldiers" is mentioned as a proper purpose in the Elizabethan statute of Charitable Uses on which all later decisions are supposed ultimately to rest. The raising, levying, and equipping of soldiers was included in the phrase. There can be no doubt that a trust for the armed forces generally or for their equipment is charitable, as is a trust for a special kind of professional equipment. The benefactor is free to decide in detail the special public purpose he wishes to advance. In *Wilkinson* v. *Malin* (1832), 2 C. & J. 636, an ancient trust which provided, *inter alia*, for the "buying of armour" was held to be charitable. There can be no objection to a charitable trust being limited to special unit, for example, a regiment, a squadron or a ship. A volunteer corps (*Re Stratheden & Campbell* (1894), 3 Ch. 265) and yeomanry and militia units (*Re Donald* [1909] 2 Ch. 410) have been held to be charitable objects. The present Home Guard, certainly, and the Observer Corps, probably, would be held to be covered by the same principle.

A trust may be charitable although it does not assist national finance by providing for strictly professional matters. A trust for the benefit of soldiers may indirectly benefit the army and therefore benefit the public. In *Re Good* ([1905] 2 Ch. 60) a testator gave his residuary personalty on trust for the officers' mess of his regiment, the income to be applied in maintaining a library for the mess for ever, any surplus to be expended in the purchase of plate for the mess. It was held to be a good charitable bequest, being for a general public purpose tending to increase the efficiency of the army. Farwell, J., thought it plain from the evidence of the Assistant Adjutant-General that the officers' mess is an integral portion of the regiment and not a mere club: "I am not of course suggesting for a moment that the officers are objects of charity. It is the public, not the officers, that are benefited by better means being put at the disposal of the officers to enable them to make themselves efficient servants of the King for the defence of their country . . . It is suggested that the literature that may be bought may not necessarily be confined to military literature; but I cannot regard that as a consideration in this case any more than the courts have considered that in the case of a provision for a public library the library may contain rubbish as well as useful books. I must assume that the books bought will be books of merit, and, after all, so long as they are books of merit they need not necessarily be confined to military literature. An officer is all the better equipped if he can speak several languages, and if he knows the history and geography of his own nation as well as many other nations,

as well as being instructed in the military art" (*ib.*, 67–68). On the other hand in *Re Good* a gift of two houses for the use of old officers of the regiment at a small rent during their lives was held not to be charitable and was therefore void for perpetuity.

The encouragement of sport among the armed forces is a charitable object as it promotes efficiency through physical fitness: *Re Gray* [1925] Ch. 362. In *Re Barker* (25 T.L.R. 753) a trust to provide prizes for competition among Royal Engineers cadets or officers was held charitable.

The welfare of sick and wounded combatants is a charitable object. In *Re Welsh Hospital (Netley) Fund* [1921] 1 Ch. 655, a hospital for the benefit of Welsh soldiers erected by voluntary subscriptions raised in Wales was closed after the war, there being a surplus of some £9,000 after the winding-up. On a subscriber applying for some return in respect of his subscription, it was held that there was no resulting trust of the surplus for the subscribers, as there would have been if it had been a non-charitable trust, but as there was a general charitable intention the fund remaining would be applied *cy-près*. The trustees desired to devote the fund to the endowment of scholarships for the study of medicine in the University of Wales: it was not necessary to decide whether this was a good *cy-près* application, though Lawrence, J., thought there was great force in the argument that if a fund is devoted to the benefit of sick and wounded, that benefit includes the training of persons whose duty it would be to attend to the sick and wounded, but he agreed that some other method of applying the fund might be found which was nearer to the immediate object for which it was raised.

The provision of general amenities for the armed forces would appear to be worthy of the privileges of a charitable trust, at least in time of war. In *Re Barker*, *supra*, it was supposed that a gift to the Union Jack Club for the upkeep of bedrooms and attendance for the use of men of the Royal Engineers was charitable on the ground that the club tended to improve the condition of soldiers. But a club for officers, as distinct from a library or mess equipment, would not be held a charitable object. On the other hand, in the last war in the unreported case of *Re Princess Mary's Fund* (see [1921] 1 Ch., p. 656) the facts were that a fund had been formed in 1914 by subscriptions to send "Christmas presents from the whole nation to every sailor afloat and every soldier at the front" and when the fund was closed there was a large balance in the hands of the trustees. It was held to be a charitable trust: there was no resulting trust for the subscribers, there being a general charitable intention which enabled the court to direct that the balance might properly be applied *cy-près* in maintaining a maternity home for the wives and children of soldiers and sailors.

Purposes indirectly connected with the Services.

A good charitable object is the benefit of disabled ex-service men. In 1931 an English court was able to hold that a bequest "to the German Government for the time being for the benefit of its soldiers disabled in the late war" was not void for uncertainty but was a good and valid charitable trust and not against public policy. And it seems that a charitable trust need not be confined to disabled ex-service men or even those in need of financial assistance. The latter may be brought under the well-known heading of "the relief of poverty," but in *Verge* v. *Somerville* ([1924] A.C. 496, P.C.) the trust was not confined to this class of beneficiaries, yet it was held to be charitable. It was for the purpose of assisting Australian soldiers to return home and helping them on their return and this was recognised as a public purpose irrespective of the absence of any test of their individual means.

The encouragement of what may be called pre-military training was held sufficient in *Re Stephens*, 8 T.L.R. 792. A bequest to encourage skill in rifle shooting "to prevent, as far as possible, a catastrophe similar to that at Majuba Hill," was valid as a charitable gift, although it was not made to the military authorities. On the other hand, in the Scottish case of *Scottish Flying Club, Ltd.* v. *Inland Revenue Commissioners* (1935), 20 Tax Cas. 1, a club was held not to be a body established for charitable purposes only so as to be able to obtain exemption from income tax on this ground; this was so although no profits were paid to the members and the club was in receipt of a Government grant. But this does not necessarily mean that the encouragement of civilian flying is not a charitable object in general, for the company in this case was found to be primarily a club. Five years ago this object was thought to be of sufficient "benefit to the community generally" to justify assistance out of national funds, and now the importance of such a public purpose can hardly be over-emphasised.

It has been held that the erection of a war memorial is a charitable purpose, but in the case (*Murray* v. *Thomas* (1937). 4 All E.R. 545) in which this conclusion was reached the intention of the trust was that the memorial "should be of a useful character, possibly in the nature of a memorial hall." If the memorial had not been intended to be of material benefit to a particular area the result would have been different. In this case funds subscribed from two villages were found to be insufficient for the building of a village hall, but as the object was charitable the subscribers were not allowed the return of their subscriptions under a resulting trust; a scheme was ordered for fulfilling the original intention in some other manner.

Purposes Beneficial to Civilians.

There can be no doubt that such objects as the A.R.P. and the Auxiliary Fire Service are as much charitable objects as the fighting services. The public benefit is here far greater than in many of the instances in which the legal definition of charity has been satisfied.

The assistance of refugees from enemy territory seems to be within the purview of the Elizabethan Statute of Charitable Uses: "Relief or redemption of prisoners or captives." A trust for civilian victims of enemy attack would be charitable as would one for the restoration of public buildings damaged by war. Indeed, a trust to aid the reconstruction of property generally, even one limited to private property, would probably be charitable as being in aid of taxation and public funds: it would fulfil the same function as public compensation grants and similar grants.

A charitable trust may limit its objects to those which have become such as a result of war. For example, in so far as a hospital is a good charitable object it may be limited to or give priority to air-raid victims. A trust for the blind is charitable and therefore a trust for those blinded through enemy action is also charitable.

It seems to be implied in s. 11 of the War Charities Act, 1940, *supra*, that in the case of persons affected by war the ordinary criterion of individual need or distress is relaxed: the section speaks of the supply of "comforts" as though it was a charitable object in addition to the supply of "needs." "Comforts" is a word usually found in connection with the services where it may well have a "charitable" meaning as conducing to military welfare. It would be interesting to have a ruling on the question whether the supply of non-essential amenities to civilians affected by war is covered by legal charity. It is, of course, difficult to draw the line between needs and comforts.

A decision which may be far-reaching is *Re Cotton Control Board's Levies Fund* (unreported: see [1921] 1 Ch., p. 657). Very large surplus funds were in the hands of the Cotton Control Board, being accumulations representing levies imposed by the Board on cotton manufacturers and spinners during war years, the levies being used for the relief of operatives temporarily discharged as the result of the war-time restrictions on output. After the armistice the levies were discontinued, but it was held there was no resulting trust of the surplus for the manufacturers and spinners. It was applicable to charitable purposes *cy-près* and the court sanctioned a trust deed for devoting the surplus for the benefit of the cotton industry and the persons engaged in the industry.

It is well known that "patriotic" purposes are not charitable (*Re Tetley* [1923] 1 Ch. 258) unless the context clearly limits them to patriotic purposes which are at the same time clearly charitable. But a benefactor's patriotic instincts would not be thwarted if he followed the example of Mr. Smith who left his property "unto to my country England—for own use and benefit absolutely" (*Re Smith* [1932] 1 Ch. 153). In the last case there was held to be a general charitable intention to be given effect to by a trustee designated under the Sign Manual.

A Conveyancer's Diary.

Commorientes.

SECTION 184 of the L.P.A. provides: "In all cases where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and, accordingly, the younger shall be deemed to have survived the elder." This provision was new, there having previously been no presumption, and I know of no cases on it. In ordinary times the section is an interesting piece of learning bearing little relation to ordinary practice. But, as things are just at present, it has acquired a grim practicality, to which a correspondent calls attention. Before dealing with his specific question, it will be as well to examine the general position.

The statute creates a presumption, which is to arise only where a condition precedent is fulfilled, viz., that it is uncertain which person died first. This condition is not confined to cases where the persons concerned have perished in the same catastrophe, although the word "*commorientes*" usually used in speaking of the section suggests that. Suppose that if on the same night two bombs are dropped on two different houses, whether near together or at opposite ends of the country, and each of two persons interested in the same estate is pinned under one pile of wreckage, and is later dug out dead; then I have no doubt that the section would *prima facie* apply. Of course, the normal case will be that where a single household is blown up, and where there is more than one catastrophe, there would be a poorer chance of showing that it is uncertain who died first. But in principle the section is not confined to those who perish in the same catastrophe.

Once the condition of uncertainty is fulfilled, the section creates a presumption of fact; it is not a legal presumption in the strict sense as it only operates "subject to any order of the court." But it is very difficult to see in what circumstances the court could be satisfied that it ought to make an order inconsistent with the presumption, except in cases where there is no uncertainty, and where, accordingly, the section does not operate anyhow.

It is, of course, notoriously difficult to prove a negative, and the concept of uncertainty is negative. But the Probate Court has already had to struggle with this same question in such cases as *In the Estate of Alston* [1892] P. 142, and *In the Goods of Beynon* [1901] P. 141. In those cases the executor was given leave to swear death and that there was no reason to suppose that A had survived the deceased, and we can, I think, apply the same test here. Where X is the testator or intestate and there is no reason to suppose that B survived him, and some reason to doubt whether he did, then there is uncertainty, which brings the section into play. Once it can be invoked it applies, of course, not only to the question who is to take the grant, but also to all questions affecting the title to property, whether under a will, settlement or intestacy.

The actual case suggested by our correspondent was that of a husband, wife and two infant children, who were all killed together. I do not imagine that there was any doubt that they were *commorientes* in the narrowest sense. The wife was younger than the husband, and apparently both were intestate. Each spouse left one parent surviving. It was suggested that the whole estate of the husband would go to the wife's surviving parent, a monstrous result, which, fortunately, is not quite correct, though it is not really fair as it is. Under s. 184 the husband is deemed to have died first. On his intestacy the whole of his personal chattels and the first £1,000 of his estate go to his wife. If it is a small case there is nothing for anyone else. The wife also got a life interest in half the residue, but this estate existed only for a moment of time. The wife is taken to have died next, a widow; so the husband's estate would not get any chattels or the £1,000, since the Ad. of E.A., 1925, s. 46 (1) (i), only gives these benefits to a *surviving* spouse. The next persons entitled to both estates are the children, but their interest is subject to the statutory trusts, under which it only vests if they attain the age of twenty-one or marry, which they did not. Both estates, therefore, go over to the persons entitled in default of issue, namely, the surviving parent in each case; but the wife's estate is swollen by the £1,000 and personal chattels, and the husband's is depleted to the same extent. There lies the unfairness, which is bad in all cases and shocking in cases of small estates. The moral is that everyone ought to make a will.

It is, however, not sufficient to make an ordinary will. Thus, if the husband had left all his estate to the wife and she had died intestate, the whole of it would go to her parent, or, if she had no parent, to a remoter relative of hers. If the wife had left all her estate to her husband, she would be intestate, as he is presumed to have predeceased her. If they had made mutual wills, leaving their property to one another *simpliciter*, the wife, as survivor, would take the whole of the husband's property, but she would be intestate, with the consequence that both estates would go among her relatives. Again, if each had left his or her estate to the other, but had given other bequests in case the primary universal legatee did not survive, the wife would, as survivor, take the husband's estate, and her substituted legatees would take the whole of hers.

The fact is that the ordinary will contemplates that the persons interested will die at decent intervals, so that the one who first takes a legacy will have a space in which to reconsider his or her will in view of the fresh circumstances. As we can none of us really count at present on not being commorient with our own household, wills ought here and now to be reconsidered to see if they cover that case, having regard to s. 184 and our respective seniorities. Thus, the family concerned in the case we have been discussing could have considered the position while there was yet time. The husband would probably have said to himself: "I want my wife to get my estate if she is going to live for a reasonable time to enjoy it and to think what she is going to do about it when she dies, and if my children live to grow up, I want them to have it, but apart from this I want it to go back to father." He could then have made a will appointing trustees and giving his whole estate to his wife absolutely, defeasible if she did not survive him by more than six months, subject thereto to such of his children who attained twenty-one absolutely, and subject thereto to his father. Most husbands are older than their wives, and they must not forget that the person mainly concerned to defeat injustices arising under s. 184 is the senior person involved. If the husband had made a will like this, it would not much matter from this point of view what sort of will his wife made. If she did not survive him by six months his estate would go according to the later provisions of his will. If she did outlive him by six months, she would have had time to consider whether to make a new will, which is all that those who leave their estates outright to their wives have any right to expect.

Where the property is settled by the will, the position is not so serious, as the chain of life estates will take effect, some perhaps only for a moment. The worst that can happen is that the gift of a life interest to someone who is going to die almost at once is waste of the extra estate duty it will attract in the life tenant's estate. It will, therefore, be desirable in large cases to consider whether the life estate might not be made to run from the death of the testator as to quantum, but to vest only if the life tenant survives the testator by, say, three months. Alternatively it might be advisable to give a life interest contingent on the life tenant surviving for a certain term and compensate him or her for losing the first few months' interest by giving him or her a legacy of the same amount.

Where the property is already settled, it is usually too late to do anything about the difficulties raised by s. 184; and nothing need usually be done about appointments in exercise of a power to appoint among issue, as such appointments are usually contingent on attaining twenty-one. But if one of the children of the household is of full age or is about to become so, the position should be considered so that he or she may make a will, having regard to the fact that, in a common catastrophe, both parents will be deemed to have predeceased the child, and to have done so in order of seniority. And, again, regard should be had in large cases to the fact that an absolute exercise of a power to appoint a life interest to a surviving spouse may attract duty in respect of an interest never actually enjoyed. The same considerations apply here as apply to the gift of a life interest by the testator's own will out of his absolute property.

Finally, s. 51 (3) of the Ad. of E.A. must not be forgotten. Thereby, an infant entitled under a settlement (or an intestacy: see *Re Taylor* [1931] 2 Ch. 242) to an equitable fee simple in land, who dies unmarried (and, since he is an infant, necessarily intestate unless he is qualified to make a "soldier's will"), is to be deemed to have had an entailed interest in the land. Such land would then go to the settlor's or intestate's next heir in tail. The infant, of course, can do nothing about the matter, but the persons who might get the interest unexpectedly should see that their wills deal properly with it, in case they have not space to make a new will. Such cases are, of course, rare, but, if they arise, are likely to be important.

The matters here discussed are new, as the sudden death of a household is a new thing among us; and the last war occurred before s. 184 existed. They are also grisly, but they must be faced if there are not to be heartburnings to aggravate tragedy.

Landlord and Tenant Notebook.

Assignor Absolved by Statute.

A MINING lease usually contains a number of features which, if read by themselves, might make the reader wonder whether he was reading a lease at all. A good deal of the law of landlord and tenant never affects the relationship of the parties. "Although we speak of a mineral lease, or a lease of mines," said Lord Cairns, L.C., in *Gowan* v. *Christie* (1873), L.R. 2 Sc. App. 273, "the contract is not, in reality, a lease at all in the sense in which we speak of an agricultural lease . . . What we call a mineral lease is really, when properly considered, a sale out and out of a portion of land. It is liberty given to a particular individual, for a specific length of time, to go into and under the land, and to get certain things there if he can find them, and to take them away, just as if he had bought so much of the soil."

The "if he can find them" accounts for the nature of the most unusual of the unusual features, the reddendum; for it

is, of course, owing to the speculative nature of mining that fluctuating rents are the rule. Nevertheless, a mining lease is a lease, and we were recently reminded of this by the case of *The Dalton Main Collieries Co., Ltd.* v. *The Rossington Main Colliery Co., Ltd.* (1940), 84 SOL. J. 704. For it was apparent that, but for the provisions of a special Act of Parliament, the assignors of a mining lease would have been liable on their covenants after the assignment like any other tenant.

The lease in the above case was granted in 1911 to the first defendants; the second defendants, their assignees, came on the scene in 1936, the assignment being part of a statutory scheme confirmed by the Court of Railway and Canal Commission in that year. In 1929 a local statute known as the Doncaster Area Drainage Act was passed, obliging "mineowners" to execute certain works and authorising them to deduct a proportion of the cost from royalties. There was no doubt that the second defendants answered to the statutory description of "mineowners," but the question, submitted in the form of a special case, was whether the plaintiffs, their landlords, were entitled to recover from the first defendants, the original grantees, the full amount of the rent reserved as royalties. Argument centred round two subsections of s. 12 of the special Act, and it is perhaps possible to contend plausibly, if not very much so, that Parliament did not seriously mean to abrogate a well-established principle of the common law by a few words in a subsection, namely, s. 12 (3). For the first subsection of that section would not modify the assigning tenant's liability. The mineowner—in this case, be it remembered, the assignee—"shall be entitled to deduct from the royalties which any person is entitled to receive in respect of the minerals, such proportion of the costs so incurred or of the sum so paid as may be determined to be proper." The case of an assignment of the reversion is covered by the "any person is entitled to receive"; nothing touches an assignor of the term who was its original grantee. But subs. (3) says; "in any case where the mineowner is entitled under the provisions of this section to make such deduction from royalties the *sum reserved* and payable *under the lease* shall be deemed to be the net amount arrived at after making such deduction." One may cite Lord Kenyon's judgment in *Auriol* v. *Mills* (1794), 4 T.R. 94: "It is extremely clear that a person who enters into an express covenant in a lease remains liable on his covenant, notwithstanding the lease be assigned over," and even older authorities (such as *Barnard* v. *Godscall* (1612), Cro. Jac. 309); but the conclusion that the Legislature meant to except assignors in cases to which the Doncaster Area Drainage Act, 1929, applied seems irresistible. More direct and explicit wording might have been employed, but, as Farwell, J., held, there was only one rent payable under a lease and that was the rent as reduced by s. 12.

Though Parliament is not likely to interfere with the operation of the common law rule save in special circumstances, it has done so before, and in a public Act. When L.P.A., 1925, s. 202, brought into effect the conversion into long terms of perpetually renewable leaseholds effected by L.P.A., 1922, the provisions of s. 145 and Sched. XV of the last-mentioned statute came into operation; and the 2,000-year leases thereby created were subjected to the provisions of s. 11 (1) of that schedule, "... each lessee or underlessee, although he may be the original lessee or underlessee, and notwithstanding any stipulation to the contrary, shall be liable only for rent accruing and for breaches of covenants or conditions occurring while he or his personal representatives shall have the term or sub-term vested in him or them ..."

To take a case in which, at first sight, it appears that rent may be increased, instead of reduced, by statute, the Landlord and Tenant Act, 1927, provides for payment to landlords of the amounts by which fire insurance premiums, rates and taxes may increase in consequence of improvements, that is when and in so far the premiums and rates and taxes may be payable by the landlord. Section 16 first gives the landlord a right to recover the increases: "the tenant shall be liable to pay to the landlord sums equal to the amount by which, etc.," and goes on, "and the sums so payable by the tenant shall be deemed to be in the nature of rent and shall be recoverable as such from the tenant ..." There is no distinction between original tenants and their assignees, but I do not think this is a *casus omissus*. The section says that the sums shall be "in the nature of rent," but they are not rent, and the reddendum is not, as is the case with the Doncaster Area Drainage Act, 1929, changed. The "recoverable as such" is probably intended to make the remedy of distress available to the landlord, but not to make a previous and original tenant liable for what he never covenanted to pay; and it is by virtue of the covenant to pay rent that original grantees remain liable. In the judgment in *Auriol* v. *Mills*, *supra*, Kenyon, C.J., pointed this out: Where there is no express covenant to pay rent "the action of debt will not lie against the original lessee."

The familiar statutory tenancy of the Rent Restrictions Acts is not assignable (see the "Notebook" of 14th December last (84 SOL. J. 690)), but on the death of the tenant a member of his family may in certain circumstances succeed to the tenancy (s. 12 (1) (*g*) of the 1920 Act, the interpretation section). In *Tickner* v. *Clifton* [1929] 1 K.B. 207, a landlord made a gallant attempt, successful at first instance, to establish that the successor was liable for arrears of rent accrued due during the deceased's term. The county court judge appears to have based his conclusion on the view that the defendant was an *executrix de son tort*, but there was no evidence to support this and, allowing the appeal, Swift, J., said: "I can find nothing in the ... Act ... which provides that a statutory tenant who becomes entitled to the benefits of a statutory tenancy because he was a member of the family of the preceding tenant and was residing with him at the time of his death is liable to discharge liabilities incurred by the preceding tenant during his life."

Our County Court Letter.

The Rights of Smallholders.

IN a recent case at Holbeach County Court (*Powley* v. *Ministry of Agriculture*) the applicant had formerly been a tenant of the respondents in a smallholding. By reason of the applicant having taken the licence of an inn, 30 miles away, he was served with notice to remedy the breach of a covenant in his agreement, viz., that the tenant should personally reside on the smallholding. As the applicant had left his son in charge, and made frequent supervisory visits, the applicant did not return. In consequence of his non-compliance with the above notice the applicant was given seven days' notice to quit. He subsequently claimed compensation for disturbance, on the ground, *inter alia*, that seven days was unreasonably short notice. Alternatively the condition was not "consistent with good husbandry" within the meaning of s. 12 (1) (*b*) of the Agricultural Holdings Act, 1923. The arbitrator stated four points in a case for the opinion of the court, viz.: (1) In considering the question whether the tenant had failed to comply, within a reasonable time, with the landlord's notice, can the full facts of the case (leading up to the service) be taken into consideration, or must the time alone given by the notice be considered, without regard to the previous facts? (2) Can the decision in *Civil Service Co-operative Society* v. *McGrigor's Trustee* [1923] 2 Ch. 347, be taken into account, although not under the above Act? (3) What construction is to be put upon the expression "consistent with good husbandry" in the above subsection? (4) If reasonable time was given by the notice, is a breach of the term "personally to reside in the dwelling-house" one that the breach of which, if not remedied, deprives the tenant of his right to compensation? His Honour Judge Langman held (1) That the arbitrator should only take into account the time elapsed after the notice, and should not consider any oral notice previously given; (2) this question should be answered in the negative; (3) the phrase "consistent with good husbandry" did not mean "essential or requisite" to good husbandry, but in keeping therewith; (4) this question should be answered in the affirmative.

Decision under the Workmen's Compensation Acts.

Wagoner's Earning Capacity.

IN *Gardner* v. *Hutchings & Co., Ltd.*, at Stratford-on-Avon County Court, the applicant was aged fifty-nine, and had been employed by the respondents since 1912. He was originally a blacksmith's assistant, but was a wagoner from 1935 onwards. In January, 1940, the applicant was carrying one hundredweight of coal, when he slipped in the snow, injuring the hip joint muscles and right thigh. Compensation was paid until the 17th May, when the respondents served a notice (under s. 12) that the applicant could do suitable work. Although the applicant admittedly had an osteo-arthritis joint before the accident, he was not thereby prevented from doing heavy work. The accident had aggravated the condition, and total incapacity was continuing. The respondents' answer was that the applicant's earning capacity was £1 10s. a week, and they had accordingly paid him 7s. 9d. as for partial incapacity. An amended answer alleged that the applicant was fit for his pre-accident work. Having heard the medical evidence on each side, His Honour Judge Kennedy, K.C., assessed the applicant's earning capacity at 30s. a week. An award was made of full compensation up to the 12th November, 1940, and thereafter of 7s. 9d. per week, together with 1s. 2d. supplementary allowance, and costs.

Practice Notes.

Trading with the Enemy Act, 1939.
Enemy Company's Patents: Vesting Order.

BAYER PRODUCTS, LTD., of Kingsway, and one, C, applied for an order that certain inventions and patents might vest in the company. The B Company, it was said, were beneficially entitled under an agreement of 1926 and a declaration of trust made in 1932; the patents at present stood in the name of a German company, a bare trustee for the English company. Rectification of the register was also sought. Imperial Chemical Industries, Ltd., of Millbank, opposed the application. A preliminary objection was taken that a vesting order would amount to an "assignment of a chose in action made by or on behalf of an enemy." By s. 4 (1) of the Trading with the Enemy Act, 1939, except with the consent of the Treasury, no such assignment will confer on any person any rights or remedies in respect of that chose in action. In the present case, no such sanction had been obtained; a vesting order, it was argued, would, accordingly, be ineffective.

Morton, J., overruled this preliminary objection. Without deciding whether the enemy company was, or was not, a bare trustee, the assignment in the present case would not be an assignment made "by or on behalf of an enemy," but one made by a person who is not an enemy claiming to be beneficially interested (*In re I.G. Farbenindustrie-Aktiengesellschaft's Agreement & Declaration of Trust* (1940), 57 T.L.R. 148, 149).

> "It would . . . be indeed strange if some British subject who owned property, vested at the moment in a German as a bare trustee for the British subject, were not entitled to ask the Court for a vesting order in respect of that property without first obtaining the sanction of the Treasury."

The learned judge observed that it was not necessary for this purpose to decide whether the assignment of a bare outstanding legal estate in a chose in action came within s. 4 (1).

It was also submitted on behalf of the company that since the I.G. had been on the register for many years, now was not the time to investigate whether Bayer Products, Ltd., were, or were not, the beneficial owners; the times were "unusual." Morton, J., dismissed this argument:—

> "The object of keeping the courts in being and discharging their usual functions during war-time is to determine the rights of litigants who come and seek to have their rights determined" (at p. 149).

Accordingly, the applicants ought to have determined the question of the beneficial ownership of the patents.

The comptroller did not appear on the summons, or send a representative to consent; he had stated by letter to the applicants' solicitors (who had sent him copies of the affidavits) that he did not desire to offer any observations. In deciding whether a vesting order should be made, that was one element to be considered. Since the learned judge proposed to investigate the question of beneficial ownership, it could not embarrass the Comptroller if a vesting order were made. Section 2 (1) of the Patents, Designs, Copyright and Trade Marks (Emergency) Act, 1939, enables the Comptroller, where an enemy or an enemy subject is, or has been, since 3rd September, 1939, the proprietor of a patent, on being satisfied that it is in the interests of any or all British subjects that the patent rights should be exercised, to grant a licence under the patent to any person, not being an enemy or enemy subject, who is able and willing to exercise those rights. Whether I.G. was a bare trustee or not, I.G. had been, since 3rd September, 1939, the proprietor of a patent; the powers of the Comptroller (if he possessed them) remained, in any event, unaffected by any vesting order which might, or might not, be made.

Morton, J., declined to fetter his discretion; if he found that Bayer Products, Ltd., were the beneficial owners of a particular patent, he would *then* consider whether or not to make a vesting order.

A new Defence Regulation provides that if the crop harvested from any agricultural land is damaged or goes to waste as the result of any failure or delay of the occupier of that land to take reasonable steps to keep the crop in good condition, he will be liable to a fine not exceeding £50.

The directors of the Equity and Law Life Assurance Society announce that in order to facilitate the reconstruction of the board as indicated in the chairman's speech at the last annual general meeting, Sir Dennis Herbert, M.P., has resigned the chairmanship. Sir Geoffrey Ellis, M.P., has been appointed in his place, and Sir Bernard Bircham, Mr. C. A. McCurdy and Mr. W. P. Phelps have resigned from the board.

To-day and Yesterday.

Legal Calendar.

6 January.—In 1848 Ireland was in a state of the utmost disorder and civil confusion. Typical of the events which were happening far and wide was a tragedy disclosed at a trial before a Special Commission sitting in Limerick. A ruffian, called Ryan, who had been turned out of a farm by his landlord for unpunctuality in paying his rent, conceived a grudge against the new tenant, Michael Kelly. Not content with shooting and wounding him, he went one night to the home of his brother, John Kelly, and shot him dead in the midst of his family. He was convicted and sentenced to death. On the 6th January, 1848, there was a sequel when William Frewin, a respectable farmer, was tried for harbouring the murderer to defeat the ends of justice. He was found guilty and, as an example, was sentenced to transportation for life.

7 January.—On the 7th January, 1831, David Little was tried at Glasgow for a burglary committed more than five years before. There had been great alarm in the house at Calder, where Mrs. Hill and her daughters lived, when one night three men masked and armed had broken in. They had bound the maids, locked up the footman, and forced the girls to show them where the keys, the money and the valuables were. After the exploit Little had taken himself off to Manchester and worked there till his arrest. Found guilty, he was recommended to mercy on the ground of his youth at the time of the crime, but he was hanged nevertheless.

8 January.—On the 8th January, 1749, "Jackson and Carter, two outlawed smugglers, in Newgate, were brought into the press yard, stripped and washed with vinegar and afterwards dressed in two new suits of clothes sent them by the Government. Next day they were ordered to Chichester Gaol." The hygienic methods of the eighteenth century seem rather crude but the condition of the prisons made washing with vinegar a very useful precaution.

9 January.—On the 9th January, 1794, at about ten in the morning, a vast crowd assembled in front of the "Black Bull" Inn, at Edinburgh, where Maurice Margarot, indicted for sedition, lodged. When he came out, attended by three friends, "the mob forced all the four into a chaise which they had provided and from which they had previously taken the horses. This done, they immediately drew the carriage to the Parliament Close where Mr. Margarot and his friends alighted and walking into the Parliament House, he assisted himself at the Bar." On his way home Mr. Margarot was again forced into a carriage by the mob along with five of his friends and, the horses being taken from the coach, the mob drew him to his lodgings at the "Black Bull" Inn. He was sentenced eventually to fourteen years' transportation.

10 January.—On the 10th January, 1674, Lord Keeper Finch was raised to the peerage as Baron Finch of Daventry, in the County of Northampton.

11 January.—In January, 1793, three young printers' intoxicated by the doctrines of the French Revolution, were convicted at Edinburgh of attempting to spread disaffection among the troops at the Castle and proposing as a toast in the canteen "George the Third and last and damnation to all crowned heads." On the 11th January, when they were sentenced, the court let them off lightly, despite the special dangers of the times. Lord Henderland observed that they were not "aged and inveterate criminals," and accordingly need not be transported so as to oblige them "by hard labour in an infant colony to repair in some measure the injury they had done here." Whipping was too shameful. A long term of imprisonment in the Tolbooth "that unhallowed place which is the sink of corruption" would ruin them. They were sentenced to nine months' close confinement—"no meeting of associates, no gossiping or drunkenness."

12 January.—In 1801 England made a brief and uneasy peace with Napoleon, and the men of H.M.S. "Temeraire," belonging to the Bantry Bay Squadron, on hearing that they were to be sent to the West Indies, determined that, as the war was over, they would not go. An ugly situation developed, for they were determined not to work the ship and were ready to kill their officers if force were used against them. Their comrades in other ships had assured them of support and minor violence was boiling up into open revolt when the firmness and courage of Admiral Campbell and Captain Eyles and the loyalty of the Marines restored order. On the 12th January, 1802, at the conclusion of a court martial on board H.M.S. "Gladiator" at Portsmouth thirteen mutineers were condemned to death. They acknowledged the justice of their sentence and thanked the court for its patience.

THE WEEK'S PERSONALITY.

When, after three years as Attorney-General, Sir Heneage Finch became Lord Keeper and Baron Finch of Daventry, he still had before him the higher dignities of Lord Chancellor and Earl of Nottingham. At the Bar he had won a great reputation for eloquence, though some thought his style self-conscious and affected, but as a judge he assumed a role of lasting importance in legal history. Like his great predecessor Sir Thomas More, he had been bred in the common law, and like him he set out to bring order into the Court of Chancery. No one had anything to say against him as a judge, for his independence and impartiality were unquestioned, even by those who considered that as a politician he was too subservient to the Crown, or who found his behaviour haughty and vain. The worst that could be said of him was that he was something of a formalist "supposing that if he split the hairs and with his gold scales determined reasonably on one side of the motion justice was nicely done." In fact, during the nine years he held office he had a very difficult task to perform. Equity had been allowed to run wild and the business of reducing it to a system suited to modern needs was not made easier by the eccentric conduct of his predecessor Lord Shaftesbury, who had brought to the court the mind of a layman. The better to consider the problems that arose he adopted the practice of delivering written judgments. He built "a system of jurisprudence and jurisdiction upon wide and rational foundations" and was "the father of modern equity."

GRAY'S INN HIT.

For Gray's Inn bombs are no longer glass-case curiosities in the Library faintly recalling old unhappy far-off things and battles long ago. It has suffered like its sister Societies from this year's thunderbolts. Its gardens are pitted in several places with bomb holes of various sizes. The house where the gardener lived for more than twenty years is wrecked. Half the terrace railings are blown away, and a house in Gray's Inn Square has been hit. Verulam Buildings and Raymond Buildings have been damaged by blast and no part of the Inn has its glass intact. It is to be supposed that these misfortunes must be put down as accidental since at all times it would have been hard to bring the Inn within the definition of a military objective. "I hold your Walks to be the pleasantest place about London and that you have there the choicest society," wrote an Englishman abroad in 1621, and nearly two centuries later Lamb wrote: "They are still the best gardens of any of the Inns of Court, my beloved Temple not forgotten—have the gravest character, their aspect being altogether reverend and law-breathing. Bacon has left the impress of his foot upon their gravel walks." The gardens have, indeed, changed since Bacon planted there seventy-one elm trees at 9d. each, eight birch trees at 1s. 6d. each, sixteen cherry trees at 1s. each, woodbine, eglantine, roses, vine cuttings, pinks, violets and primroses (a hundred and twenty-five "standards of roses" cost him but 12s. 6d.). Though the lawns are still green and delightful, not for many years has that vanished fragrance perfumed the air of Holborn. It is long since peace, sometimes as destructive as war, levelled Bacon's Mount and the pleasant summer-house thereon, and later covered the site with the forbidding bulk of Raymond Buildings. Lamb cursed the equally grim Verulam Buildings for an encroachment which left no trace of a one-time bowling green fenced with double quick-set "so that no cattle might come in."

THE SQUARE.

Gray's Inn Square is an excellent starting point for meditations on the rebuilding of London. Accustomed to streets which Victorian and modern commercial buildings have generally left with no features but pretentious disproportion and incongruousness, the eye finds it wholly delightful. How different architecturally was that vanished London in which it seemed unattractive, when Dickens penned his venomous attack upon its "ugly tile-topped tenements" calling it the "Sahara desert of the law." The lack of love that he had for the law clouded his judgment, and the great Sir Samuel Romilly, critical though he was of much in the legal world, so that the sight of his fellow lawyers spoilt New Square, Lincoln's Inn, for him, yet found his chambers at No. 6 Gray's Inn Square very pleasant and almost rural in 1779, with but one row of houses from there to Hampstead.

Obituary.

MR. JUSTICE CROSSMAN.

Mr. Justice Crossman, a Judge of the Chancery Division since 1934, died on Wednesday, 1st January, at the age of seventy. An appreciation appears at p. 13 of the current issue.

Reviews.

The Law Relating to Trading with the Enemy. By ARNO BLUM, Advocate of the Palestine Bar, Corporate Accountant, and MAX ROSENBAUM, LL.M., of Gray's Inn, Barrister-at-Law. With the collaboration of HERBERT S. BARON, Solicitor of the Supreme Court. 1940. Demy 8vo. pp. xix and (with Index) 196. London: The Solicitors' Law Stationery Society, Ltd. Price 15s. net.

The authors of this work have courageously tackled an important, if dry and technical, subject, which must be of interest to the whole commercial and trading community and to their legal advisers. Much publicity has been given to the contraband and export controls (miscalled "the blockade") imposed upon the enemy. But the spotlight has always been focussed on the interruption of economic intercourse between the enemy and neutral countries, which it is one purpose of the Ministry of Economic Warfare to achieve. Little has been made of the negative but very powerful weapon wielded by the Treasury and the Board of Trade in the denial to the enemy of economic and financial intercourse with the United Kingdom. The main legal basis for this action is the Trading with the Enemy Act, 1939, a measure whose scope is very wide. Economic and financial conditions at the present day are so complex that this matter could not safely be left to the simple, though somewhat vague, common law prohibition of trading with the enemy, and the Act therefore covers a number of points which the business man could by no means be certain of discovering for himself; in "Blum and Rosenbaum" he will find a compendious and useful guide.

A certain number of points of detail seem to call for comment, if only with a view to their being dealt with in a future edition. The list of enemy territories given on p. 20 is not complete; not only Jersey and Guernsey are occupied by the Germans, but all the Channel Islands; the list includes Bohemia and Moravia, but omits Slovakia. In addition to "Germany," Danzig is specifically mentioned, which gives the impression that the term "Germany" refers to the Germany of the Peace Treaties. If so, Austria, the Saar, Memel and the Sudetenland should be added specifically. British Somaliland should also appear in the list.

On p. 14 the authors state that "a partnership registered in Prague would not necessarily be an enemy" under s. 2 (1) (*d*) of the Act, whereunder a body of persons constituted under the laws of a state at war with His Majesty is an enemy. And at p. 19 they say that Czechs and Slovaks "though under a German Protectorate," are not enemy subjects. Both these statements seem to be erroneous. It is true that recognition has been accorded to a provisional government for Bohemia and Moravia, situated in London (though there is no such proposed régime for Slovakia), but in fact the functioning governments of Prague and Bratislavia voluntarily submitted to the Germans in March, 1939, and British diplomatic representatives were withdrawn at that time. It seems clear therefore that all those three provinces are under German sovereignty for the purposes of the Act, just as much as Austria, whose citizens the authors admit (at p. 18) to be enemies.

At p. 16 the authors treat as obsolete the decision in *Tingley* v. *Müller* [1917] 2 Ch. 144, under which a power of attorney given by an enemy to a person resident here, for the purpose of completing a sale of land, was held not to be void, since it did not involve any intercourse with the enemy. The authors rely on s. 1 (3) of the Act, which provides that any reference in s. 1 to an enemy is to be construed as referring also to a person acting on behalf of an enemy. But it is at least arguable that s. 1 is directed only to the definition of the criminal offence of trading with the enemy, and does not affect civil matters of which an important aspect must be the position of an agent in this country on the date when his principal becomes an enemy. Does this occurrence strike at the root of the agency, or may one assume that the transaction may be completed, with the knowledge and approval of the authorities? A view contrary to that of the authors seems quite possible. Again, in Pt. III, Chap. 1, the authors undertake the very difficult task of discussing how far a contract made with an enemy before he became an enemy is to be treated as *ipso facto* void. On p. 49 they appear to suggest that where there are mutual obligations outstanding after one party has become an enemy, the contract is dissolved unless a licence for its further performance is obtained under s. 1 (2) (i) of the Act. But here also it is not clear that such a licence can revive defunct civil rights, since the provisions in question seem only to contemplate that the grant of a licence will furnish a defence to a prosecution. The whole question of the relation of the civil and criminal aspects of trading with the enemy seems to require further consideration, as also does the passage on p. 136, where it is

stated that most of the rights of an enemy are extinguished by the Act. In fact, his money claims are statutorily assigned to the Custodian, while his other choses in action and his realty are not affected except by a vesting order.

On pp. 35 and 36 the chapter dealing with the extent of the application of the Act seems rather incomplete, since it confines itself to discussing the territories covered in terms by the Act (viz., the United Kingdom), and those to which it has actually been extended by Orders in Council under s. 14 (viz., the Channel Islands and the Isle of Man). In fact, almost identical local legislation has been passed in every territory in the British Empire (using that term in its widest sense) with the single exception of Eire, so that administration throughout the Empire (except Eire) is uniform. There is even some similar legislation in Egypt and Iraq, as well as in the Dutch East Indies. It would be as well also to point out that where British firms have branches or subsidiaries which they control in neutral countries, the firm is bound to direct the operations of its mutual house so that the parent firm does not, through the latter's agency, infringe the Act.

In the chapter on criminal proceedings, it would be desirable to mention any prosecutions which have actually been brought, even though not reported in the Law Reports. For example, in *Rex* v. *Berlinski*, at the Central Criminal Court on 4th July, 1940, it was held that an offence was committed by an attempt to send a letter from this country to Brussels requesting the addressee to approach named firms in Leipsig for offers for furs lying in London. Mr. Justice Singleton expressed disapproval of the defendant's contention that no offence was committed because the proposal was not made for the benefit of the enemy but for that of the defendant. And, similarly, in *Rex* v. *Vogel* (Bow Street, 15th August, 1940), the defendant pleaded guilty to a charge under s. 1 (2) (*a*) (i) of the Act in that he had taken steps to secure the transit from Hamburg to New York of furs belonging to a firm in Prague of which he was a partner.

At p. 87 the authors have drawn attention to a loophole in the legislation in that there is no duty to report to the Custodian debts owing to enemies, unless he specially asks for a return. They suggest that there should be an amendment on the lines of s. 2 (1) of the Act of 1915, under which there was a duty to report enemy balances in banks or debts from £50 upwards. We are in agreement with this proposal.

It remains only to say that this book will be found a practical help for those whose business requires them to be familiar with its very difficult subject, and as such deserves every success.

The Law of Civil Defence. By R. WYNNE FRAZIER, of Gray's Inn, and the Midland Circuit, Barrister-at-Law. 1940. Demy 8vo. pp. cccx and (with Index) 1930. London: The Solicitors' Law Stationery Society, Ltd. Price £5 5s. net.

It is quite impossible to do justice in a review to a work so voluminous and learned as Frazier's "Law of Civil Defence." From the tentative beginnings in the Air Raid Precautions Act, 1937, a vast corpus of enactments has grown up in less than three years, making the legal framework for that great organisation to which we owe so much in these days of bombardment from the air. So colossal is its bulk that no ordinary practitioner could aspire to know more than its barest outline, and it baffles comprehension how even the learned author has been able to assemble and marshal so heterogeneous and unmanageable a bulk. That he has done so is a feat of a very high order, and his book will be an invaluable asset to members of the profession. None will, of course, attempt to read it from cover to cover; it is primarily an annotated work of reference into which he must dip, with the help of the very full index, for finding the answers to particular concrete problems. But it will be as well to read the various introductory surveys, prefixed to enactments, which give a lucid picture of the general scheme. In the nature of things one cannot wish such a work a long career of usefulness, as our most earnest hope is for the day when its subject will pass into history; but in the meantime we may wish it every success; the learned author's knowledge, patience and clarity have deserved well of the profession.

SOLICITORS' BENEVOLENT ASSOCIATION.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, 1st January. Mr. Gerald Addison was in the chair, and the following directors were present: Mr. R. Bullin, T.D., J.P. (Portsmouth), Vice-Chairman, Mr. Miles Beevor, Mr. P. D. Botterell, C.B.E., Sir Edmund Cook, C.B.E., LL.D., Mr. T. G. Cowan, Mr. T. S. Curtis, Mr. A. F. King-Stephens, Mr. Gerald Russell and Mr. A. M. Welsford. Grants amounting to £994 11s. 8d. were made from the general funds; six pensions amounting to £290 were awarded from the Swann Pension Fund; and an annuity of £100 from a special fund. Four new members were admitted.

Notes of Cases.

HIGH COURT—CHANCERY DIVISION.

In re Lindsay's Settlement.

Farwell, J. 11th December, 1940.

Settlement—Injury to settled land in exercise of statutory powers—Compensation paid—Whether capital or income—Casual profit.

Originating summons.

Under the settlement dated the 26th October, 1923, executed on his marriage, L was tenant for life without impeachment of waste of the settled estates. The estates included a ferry over the River Thames and certain adjoining land. The ferry was let to a tenant for an unexpired term of thirty-seven years at a rent of £200 a year. The River Thames Conservators were anxious to execute certain works to the river, but the tenant for life and the trustees of the settlement opposed their execution on the ground that they would damage the ferry and cause erosion to the settled land. By the Public Works Facilities Scheme Thames Conservancy (River Improvement) Confirmation Act, 1933, the Conservators obtained statutory authority to execute the works in question. The Act provided for the incorporation in the Act of the Lands Clauses Acts. Section 39 of the Act dealt expressly with the ferry, and provided that any claim for compensation by the owners in respect of any diminution in the value of their rights should be referred to arbitration under the Lands Clauses Acts and it was declared that, for the purposes of any such claim, the ferry should be deemed to be land. In January, 1939, the tenant for life and the trustees obtained an order of the court authorising them to put in a claim for compensation against the Conservators. This was done and the matter referred to arbitration. The duly appointed arbitrator having died before beginning the arbitration, the parties agreed to settle the dispute. By an agreement made the 18th November, 1939, between the tenant for life, the trustees of the settlement, the tenant of the ferry and the Conservators, in consideration of the payment of £750 to the trustees and of £1,200 to the tenant of the ferry the Conservators were released from all liability for loss or damage to the ferry and the settled land. This summons was taken out by the trustees for the determination of the question whether the payment made under the agreement was capital money or was in the nature of a windfall and belonged to the tenant for life.

FARWELL, J., said that he had come to the conclusion that the tenant for life was right in his contention that the agreement of the 18th November, 1939, was not entered into with any reference to the Lands Clauses Acts. An end had been put to the arbitration and the matter had no longer to be determined by reference to those Acts. The position remained to be decided by reference to the general law. This was a case where the Conservators, acting under statutory powers, had done acts which had damaged the settled land. The amount of that damage had been agreed. The moneys so paid were moneys to which the tenant for life was entitled. The case was covered by the decision of Sargant, J., as he then was, in *In re Williams* [1922] 2 Ch. 750.

COUNSEL: *A. H. Droop; C. Romer*, K.C., and *V. P. M. J. O. Stranders.*

SOLICITORS: *Cohen & Cohen.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Lindsay's Settlement (No. 2).

Farwell, J. 18th December, 1940.

Settlement—"Improvement"—Whether payable out of capital or income—Settled Land Act, 1925 (15 *Geo.* 5, *c.* 18), *s.* 83, *Third Sched., Pt. I, paras.* (xxi), (xxiii), *Pt.* II, *para.* (v).

Originating summons.

Under a settlement dated the 26th October, 1923, certain estates were settled on L for life with divers remainders over. The estate included some twenty-seven old cottages. The local authority had served notices requiring these cottages to be connected with the main sewer. They had also served notices under the Housing Acts requiring other works to be done. It was clear that if these notices were not complied with the cottages would be condemned. The work was therefore put in hand. While it was being done a number of defects appeared which had to be remedied. In the course of the work a certain amount of plaster and ceilings were injured; this damage had to be made good, and certain ancillary decorative repairs done. The total cost of these works amounted to £5,000. The first question raised by this summons, which was taken out by the trustees of the settlement, was whether these expenses ought to be paid wholly out of capital moneys or whether any part ought to be borne by income. Section 83 of the Settled Land Act, 1925, provides that the improvements authorised by the Act are the making of any of the works mentioned in the Third Schedule thereto, and any operation necessary in the execution of those works. The Third Schedule, Pt. I, which specifies the improvements which can be paid for out of capital, includes para. (xxi), "the reconstruction, enlargement or improvement of any of those works."

FARWELL, J., said he was not going to attempt to define "improvements"; each case must be dealt with in its own circumstances. Taken by itself "improvements" meant something more than ordinary

repairs. In a case of this sort, where there had been improvements to cottages by making considerable drainage works and alterations in structure, it was impossible to split up the total expenditure and say that some works, such as re-papering a room, could not be improvements within the Act. That was not a proper way of dealing with the matter having regard to the language of s. 83. In order to bring about the improvements all the works had to be done. The whole of the work which had been done had to be looked at and the whole of the expenditure could properly be defrayed out of capital. Certain alterations having been effected to a dwelling-house forming part of the settled estate to enable it to be let, the summons raised the further question whether para. (xxiii) of Pt. I of the Act, which brings into the list of improvements thereby authorised "additions to or alterations in buildings reasonably necessary or proper to enable the same to be let" was confined to structural additions or alterations. This paragraph re-enacts s. 13 of the Settled Land Act, 1890, and it was held in *In re Clark's Settlement* [1902] 2 Ch. 327, and by the Court of Appeal in *In re Blagrave's Settlement* [1903] 1 Ch. 560, that the alterations authorised by s. 13 were confined to structural alterations. A new para. (v) added to Pt. II of the Third Schedule of the Act of 1925 gives as an improvement which may be paid for by instalments "structural additions to or alterations in buildings reasonably required, whether the buildings are intended to be let or not or are already let." Farwell, J., said that he had to construe the Settled Land Act, 1925, and not the Act of 1890, and the decisions in the earlier Act did not bind him. He had come to the conclusion that the omission of the word "structural" from para. (xxiii) of Pt. I and its insertion in para. (v) of Pt. II was done purposely. There was no justification for reading the word "structural" into para. (xxiii). It followed that it was not necessary that the additions or alterations under para. (xxiii) should be purely structural.

COUNSEL: *A. H. Droop; C. Romer*, K.C., and *V. P. M. J. O. Stranders.*

SOLICITORS: *Cohen & Cohen.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

R. *v.* Judge Longson, *ex parte* Wilson.

Viscount Caldecote, C.J., Hawke and Humphreys, JJ.
30th October, 1940.

Landlord and tenant—Agricultural holding—Outgoing tenant—Valuation—Compensation to tenant—Action to recover—Duty of county court judge to determine—Agricultural Holdings Act, 1923 (13 & 14 *Geo.* 5, *c.* 9).

Application for an order of *mandamus*.

The applicant had been a tenant of a farm under a tenancy agreement of 9th April, 1924. In March, 1937, he asked to be excused from giving twelve months' notice of the determination of his tenancy, he being prepared to hand over, if the landlord agreed, to a new tenant named Bradshaw. On the 25th March the applicant vacated the farm, and Bradshaw succeeded him as tenant. On the 17th September, 1937, Bradshaw, being in some difficulty, vacated the farm. Meanwhile, in April, 1937, the landlord had agreed that a valuation should be made. A form of agreement to the valuation by named valuers, being signed by the applicant as outgoing tenant and Bradshaw. The outgoing tenant having brought an action against the landlord claiming £194, the amount of the valuation under a plea that by the custom of the country the plaintiff as outgoing tenant was entitled to be paid by his landlord the value of work done and improvements, fixtures, material, seeds, manures, crops, tillages left and other things provided and moneys expended by him in cultivating and improving the farm, the defendant landlord counter-claimed for damages for alleged misrepresentation. Judge Longson took the view that he was precluded from hearing the case because he had no jurisdiction in the light of the provisions of the Agricultural Holdings Act, 1923. The present application was accordingly made by the plaintiff.

VISCOUNT CALDECOTE, C.J., said that in his opinion there were clearly some matters for the consideration and determination of the judge. There was, first, although logically it did not come first, the counter-claim. It could not have been suggested, if the county court judge had considered the matter, that the counter-claim claiming damages for misrepresentation was not a matter which he ought to determine. He was, no doubt, familiar with the decision of the Court of Appeal in *Lowther* v. *Clifford* [1927] 1 K.B. 130. At any rate, in his (the Lord Chief Justice's) opinion, the judge should hear and determine the counter-claim. On the claim, too, there seemed to be a number of items not among those matters which were the subject of proceedings before an arbitrator as being included in the First Schedule to the Act of 1923. The matters not included in the First Schedule to the Act were also ones which the county court judge had jurisdiction to determine. Some question might arise on the claim for improvements. Under that head there appeared to be only one item amounting to £1 17s. 6d. the cost of laying down temporary pasture, out of the whole £194. Whether or not improvements would bulk largely in the matter when it came before the county court judge again, as the court thought it must, for his determination, could not now be stated. The judge might find that there were items in the account which could only be described as improvements. Claims to compensation for improvements were, by ss. 1, 5 and 16 of the Act of 1923, only to be decided before a single arbitrator, unless they were recoverable under s. 1 (3) as compensation to which the applicant was entitled under the custom of the country. Counsel had said that the claim was made specifically under the rights which he had by the custom of the country; and if he could make that claim good by evidence as to the custom, it might very well be that the county court judge would be in a position to deal with the improvements as well as the other items of claim in the action. This litigation should be determined as soon as possible. The fact that the defendant (or his executors) had agreed to the valuation by the appointed valuers made it more than likely that, once the counter-claim had been decided, the executors would agree to pay the £194 due from the landlord, unless an arrangement were made, as was nearly always the case, by which the new tenant took over the liability. The applicant was entitled to an order of *mandamus*.

HAWKE and HUMPHREYS, JJ., agreed.

COUNSEL: *Daynes*, K.C., and *Denny* (for *Withers-Payne*, on war service). There was no appearance by or on behalf of the respondents.

SOLICITORS: *Ellis & Fairbairn.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Grantham *v.* New Zealand Shipping Co., Ltd.

Lewis, J. 31st October, 1940.

Master and servant—Dangerous system of unloading vessel—Equipment necessary to make system safe available in store but not used by foreman—Failure by employer to provide a proper system of working.

Action for damages for negligence.

The plaintiff, a stevedore, was working for the defendant company in the unloading of crates of cheese from a vessel in the Royal Albert Dock. He was working in a barge alongside the vessel, and the cheeses were being hoisted over the side of the vessel into the barge in slings made of rope and net and operated by a derrick and winch. While a sling containing several crates was being raised, a crate fell out on to the deck, rolled over the side of the vessel, and struck the plaintiff in the barge below, inflicting injuries for which he brought this action. At the point where the crate fell overboard, the deck-rail had been removed in order to facilitate the process of unloading. There was consequently nothing to stop a crate which was rolling towards the gap except the top of a curtain plate projecting some 6½ inches above the level of the deck. The plaintiff alleged (*a*) that the defendants employed a dangerous sling; (*b*) that they negligently failed to take any steps, by fitting a rope or stanchion in the gap where the deck-rail had been, to avoid such an accident as had occurred; and (*c*) that that failure resulted in a failure by the defendants to provide a proper system of working, so that the defence of common employment was not open to them. The defendants contended that the method adopted was in fact safe, and therefore a proper method; alternatively, that, if it was not safe, that was the foreman's fault, as there was a store at hand in which the necessary rope and stanchions were readily available for making the gap in the deck-rail safe. Lewis, J., found as a fact that the use of the sling in question, although it was not the safest kind of sling, was not negligent; and that, while it was a proper method to remove part of the deck-rail, something in the nature of a rope and a stanchion should have been placed in the gap left by the deck-rail.

LEWIS, J., referred to *Wilsons and Clyde Coal Co.* v. *English* [1938] A.C. 57, and said that that case laid down that it was the employer's duty, a duty which he could not delegate, to provide a safe system of working; but that if, a safe system having been provided, an employee failed to carry it out, it was the latter who was responsible for the consequences. In the present case, although there were spars and ropes available, it was not the practice of the defendant company to make use of them for the purpose in question. It could not be said that, because the employers had spars and ropes available for other purposes, and because that tackle could have been used for the unloading of the vessel, therefore it was in fact provided for that purpose. The defendant employers had always thought, and apparently still thought, that it was safe to unload the cheeses in the way which had been adopted on this particular occasion. It did not lie in their mouth to say that they thought their method of unloading safe, but that, on the other hand, if it was to be said that the method was unsafe, their employee could quite well have fetched a spar or rope and placed it across the gap in the deck-rail. The fact was, as he (his lordship) found, that the defendants had not provided any spars or rope whatever for the unloading of the vessel, and therefore had not provided a safe system of working. His lordship assessed the plaintiff's damages at £1,000 and gave judgment accordingly.

COUNSEL: *Blanco White*, K.C., and *R. M. Hughes; Field*, K.C., and *Salter Nichols.*

SOLICITORS: *Clement Daniels & Co.; Botterell & Roche.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Rules and Orders.

S.R. & O., 1940, No. 2195/L.42.
LAND CHARGES, ENGLAND.

THE LAND CHARGES (No. 2) RULES, 1940. DATED DECEMBER 20, 1940, MADE BY THE LORD CHANCELLOR UNDER THE LAND CHARGES ACT, 1925 (15 & 16 GEO. 5. c. 22).

Whereas it is provided by paragraph (*b*) of subsection (1) of section 4 of the Law of Property (Amendment) Act, 1926,* that if an application for the registration of a charge, instrument or other matter, in pursuance of the Land Charges Act, 1925, is presented for registration within fourteen days after a priority notice in respect thereof has been given under that subsection, the registration shall take effect as if the registration had been made at the time when the charge, instrument or other matter was created, entered into, made or arose, and that the date when the registration so takes effect shall be deemed to be the date of registration:

And whereas it is provided by subsection (4) of the said section 4 that Rules may be made under the Land Charges Act, 1925, for (amongst other things) varying the number of days fixed by the said section 4:

Now, therefore, I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 19 of the Land Charges Act, 1925, as extended by section 4 of the Law of Property (Amendment) Act, 1926, and of all other powers enabling me in this behalf, do hereby make the following General Rules:—

1. The number of days fixed by paragraph (*b*) of subsection (1) of section 4 of the Law of Property (Amendment) Act, 1926, shall be extended from fourteen days to twenty-eight days.

2. These Rules may be cited as the Land Charges (No. 2) Rules, 1940, and shall come into operation forthwith.

Dated the 20th day of December, 1940. *Simon*, C.

*16 & 17 Geo. 5. c. 11.

New Year Legal Honours.

BARON.

The Rt. Hon. Sir (FRANK) BOYD MERRIMAN, O.B.E., President of the Probate, Divorce and Admiralty Division.

KNIGHTS BACHELOR.

JAMES ALMOND, Esq., Barrister-at-Law, Indian Civil Service, Judicial Commissioner, North-West Frontier Province. Called to the Bar by Gray's Inn in 1928.

ROBERT STONEHOUSE BROOMFIELD, Esq., Barrister-at-Law, Indian Civil Service, Puisne Judge of the High Court of Judicature at Bombay. Called to the Bar by the Middle Temple in 1925.

ALFRED WILLIAM BROWN, Esq., LL.D., Principal Assistant Solicitor, Office of H.M. Procurator-General and Treasury Solicitor.

GODFREY DAVIS, Esq., Indian Civil Service, Chief Judge, Chief Court, Sind. Called to the Bar by Lincoln's Inn in 1920.

CHARLES DOUGHTY, Esq., K.C., for services to the Ministry of Labour and National Service and to the Ministry of Pensions. Called to the Bar by the Inner Temple in 1902.

RANDLE FYNES WILSON HOLME, Esq., President of The Law Society, 1939–40. Admitted a solicitor in 1891.

GEORGE HECTOR THOMAS, Esq., Barrister-at-Law, Chief Judge, Chief Court of Oudh, United Provinces. Called to the Bar by the Middle Temple in 1905.

WILLIAM BRUCE THOMAS, Esq., K.C., President of the Railway Rates Tribunal.

AMBROSE HENRY WEBB, Esq., Colonial Legal Service, Chief Justice, Tanganyika Territory.

WILFRID MURRAY WIGLEY, Esq., O.B.E., lately Colonial Legal Service, Chief Justice, Leeward Islands. Called to the Bar by the Middle Temple in 1901.

NORMAN HENRY POWNALL WHITLEY, Esq., Colonial Legal Service, Chief Justice, Uganda. Called to the Bar by the Inner Temple in 1907.

COMPANION OF HONOUR.

The Rt. Hon. WILLIAM MORRIS HUGHES, K.C., Minister for the Navy and Attorney-General, Commonwealth of Australia.

ORDER OF ST. MICHAEL AND ST. GEORGE.
K.C.M.G.

The Hon. OWEN DIXON, Judge of the High Court, Commonwealth of Australia.

C.M.G.

ERNEST FRANCIS WITHERS BESLEY, Esq., Legal Adviser to His Majesty's Embassy in Cairo. Called to the Bar by the Inner Temple in 1921.

WALTER HARRAGIN, Esq., Colonial Legal Service, Attorney-General, Kenya.

ORDER OF THE BATH.
K.C.B. (MILITARY DIVISION).

Col. GERALD TREVOR BRUCE, C.B., C.M.G., D.S.O., T.D., D.L., Chairman, Territorial Army and Air Force Association, Glamorgan. Admitted a solicitor in 1893.

K.B.E.

EDWIN MORTIMER DROWER, Esq., C.B.E., Adviser to the Ministry of Justice, Iraq, and Judge of the Iraqi Courts.

ORDER OF THE BRITISH EMPIRE.
C.B.E.

CHARLES LEE DES FORGES, Esq., M.B.E., Town Clerk of Rotherham. Admitted a solicitor in 1902.

HAROLD SEWARD PEARCE, Esq., Assistant Solicitor, General Post Office.

ROGER CHARNOCK RICHARDS, Esq., Assistant Secretary, Air Ministry. Called to the Bar by the Inner Temple in 1891.

O.B.E.

WILLIAM ERIC ADAMS, Esq., Town Clerk and Air Raid Precautions Controller, Islington. Admitted a solicitor in 1925.

FRANK CHAPMAN, Esq., Town Clerk and Air Precautions Controller, Smethwick. Admitted a solicitor in 1901.

DAVID JOHN JONES, Esq., M.B.E., Clerk of the Rhondda Urban District Council. For work in connection with the Government Evacuation Scheme. Admitted a solicitor in 1923.

HENRY LESSER, Esq., President of the National Federation of Employees Approved Societies. Called to the Bar by Gray's Inn in 1913.

SAMUEL RONALD HOLDEN LOXTON, Esq., Town Clerk, Dover. For services in connection with Civil Defence. Admitted a solicitor in 1929.

KHAGENDRA NATH MAJUMDAR, Esq., Barrister-at-Law, Secretary (retired), Bengal Legislative Council, Bengal.

JOHN WILLIAM MILLS, Esq., M.I.A.E., Deputy Director of Armament Production, Ministry of Aircraft Production. Called to the Bar by the Middle Temple in 1938.

ARTHUR MORTIMER, Esq., Secretary, Wholesale Drug Trade Association. For services in connection with Civil Defence. Called to the Bar by Gray's Inn in 1926.

ALFRED WILLIAM PORTER, Esq., Principal Clerk, Taxing Office, Supreme Court of Judicature.

FREDERICK WILLIAM ROBERTS, Esq., Secretary, Registry of Friendly Societies. Admitted a solicitor in 1935.

GEORGE FOSTER ROGERS, Esq., Deputy Clerk of the Surrey County Council and Controller, Group 9, London Civil Defence Region. Admitted a solicitor in 1927.

HENRY ROWLAND, Esq., Clerk and Air Raid Precautions Controller, Glamorgan. Called to the Bar by the Middle Temple in 1915.

ERIC WEST SCORER, Esq., County Clerk and Air Raid Precautions Controller, Parts of Lindsey. Admitted a solicitor in 1906.

M.B.E.

MIRZA ABUL HASSAN ISPAHANI, Esq., Barrister-at-Law, Member of the Legislative Assembly, Bengal.

SHUJANDDIN ESMAILJI KURVA, Esq., Barrister-at-Law, Judge of the Court of Small Causes, Bombay.

CHELLAKAMI VENKAT RAO, Esq., Barrister-at-Law, Assistant Dewan, Jeypore Estate, Orissa.

U. BA HLAING, Esq., Barrister-at-Law, Chief Executive Officer, Mandalay Municipality, Mandalay.

JOHN ARTHUR JACKSON, Esq., Chief Clerk, Manchester Probate Registry, Supreme Court of Judicature.

JOHN PERCIVAL JAMIESON, Esq., D.S.O., Assistant Solicitor, Essex County Council. For services in connection with Civil Defence.

HONORARY C.B.E.

GAD FRUMKIN, Esq., Puisne Judge, Supreme Court, Palestine.

War Legislation.

(*Supplementary List, in alphabetical order, to those published week by week in* THE SOLICITORS' JOURNAL *from the* 16*th September,* 1939, *to the* 4th *January,* 1941.)

STATUTORY RULES AND ORDERS, 1940.

E.P. 2156/S.101. **Auxiliary Fire Service** (Discipline) (Scotland) Rules, December 16.

E.P. 2187. **Capital Issues Exemptions** Order, December 27.

E.P. 2180. **Cereal Breakfast Foods** (Control and Provisional Prices) Order, December 24.

E.P. 2157. **Control of the Cotton Industry** (No. 15) Order, December 19.

E.P. 2158. **Control of Diamond Wire Drawing Dies** (No. 1) Order, December 23.

E.P. 2186. **Control of Machine Tools** (No. 7) Order, December 26.

E.P. 2193. **Control of Wool** (No. 14) Order, December 30.

No. 2188/L.41. **Court of Passage** of the City of Liverpool Rules, December 20.

E.P. 2168. **Dry Batteries** (Prices) (No. 4) Order, December 20.

E.P. 2165. **Electricity Commissioners** Special Orders, etc. Rules, 1930, Relaxation Order, December 18.

No. 2176. **Export of Goods** (Control) (No. 43) Order, December 24.

E.P. 2177. **Home-Produced Eggs** (Maximum Prices) (No. 3) Order, 1940. Amendment Order, December 23.

E.P. 2178. **Imported Eggs** (Maximum Prices) Order, 1940. Amendment Order, December 23.

No. 2137. **India,** Reserved Posts (Other Services) Rules, 1938. Amendments, December 13, 1940.
E.P. 2192. **Limitation of Supplies** (Miscellaneous) (No. 5) Order, 1940. Amendment, December 26, to the General Licence of December 1, 1940.
E.P. 2189. **Livestock** (Restriction on Slaughtering) (Northern Ireland) (No. 2) Order, December 27.
E.P. 2179. **Machinery, Plant and Appliances** (Control) Order, December 24.
No. 2170. **Merchant Shipping** (Fire Appliances) Rules, December 23.
E.P. 2181. **Mustard** (Control of Cultivation) Order, December 24.
E.P. 2185. **Poole Harbour** (Aircraft Charges) Order, December 21.
No. 2162/S.102. **Probation** (Scotland) Rules, December 21.
No. 2166. **Railway.** Order, December 9, 1940, modifying the Order settling the Standard Terms and Conditions of Carriage.
E.P. 2172. **Regulation of Payments** (General Exemptions) (Amendment) (No. 8) Order, December 28.
E.P. 2173. Regulation of Payments (Paraguay) Order, December 28.
E.P. 2164. **Requisitioning of New Privately-Owned Railway Wagons** (No. 7) Notice, December 17.
No. 2182. **Safeguarding of Industries** (Exemption) (No. 16) Order, December 27, 1940 (Optical and Scientific Glassware and Instruments).

[E.P. indicates that the Order is made under Emergency Powers.]

Provisional Rules and Orders, 1940.

Motor Vehicles (Construction and Use) (Amendment No. 3) Provisional Regulations, December 20.
Motor Vehicles (Definition of Motor Cars) (No. 2) Provisional Regulations, December 20.
Road Vehicles Lighting (Special Exemption) Provisional Regulations, December 12.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of Mr. George Borg, LL.D., as Chief Justice of Malta in the place of Sir Arturo Mercieca, who resigned his appointment in June last.

The Lord Chancellor has appointed Mr. Bruce Humfrey, Registrar of the Croydon and Redhill County Courts, to be the Registrar of Dorking County Court; Mr. W. Pullan and Mr. J. H. Lawton, Joint Registrars of the Leeds, Barnsley and Pontefract County Courts, to be Joint Registrars of the Dewsbury and Wakefield County Courts; and Mr. Archibald Loy to be the Registrar of the Doncaster and Rotherham County Courts.

Professional Announcements.

(2s. per line.)

Matthew Trackman & Co.'s offices at Dominion Building, South Place, Moorgate, E.C.2, were recently completely destroyed. They have taken new offices at No. 1, Dover Street, Piccadilly, W.1, and will also continue their emergency office at 45, Green Lane, Edgware, Middlesex. All communications should be sent to the latter address. As their records and papers have been lost, will their colleagues who have any matters in hand with them kindly communicate with them thereon at their Edgware office.

Mr. Ernest E. Bird has been re-elected chairman of the Legal and General Assurance Society, Ltd., for the ensuing year. The Hon. W. B. L. Barrington has been re-elected vice-chairman.

Winter Assizes.

The following arrangements for holding Winter Assizes, 1941, are announced:—

Northern Circuit.—Mr. Justice Stable, Mr. Justice Hallett.—Tuesday, 14th January, Appleby; Thursday, 16th January, Carlisle; Monday, 20th January, Lancaster; Monday, 27th January, Liverpool; Monday, 3rd March, Manchester.

North-Eastern Circuit.—Mr. Justice Charles, Mr. Justice Oliver.—Tuesday, 28th January, Newcastle; Saturday, 8th February, Durham; Wednesday, 19th February, York; Wednesday, 26th February, Leeds.

Western Circuit.—Mr. Justice Lawrence.—Monday, 13th January, Devizes; Saturday, 18th January, Dorchester; Thursday, 23rd January, Taunton; Thursday, 30th January, Bodmin. Mr. Justice Lawrence, Mr. Justice Singleton.—Tuesday, 11th February, Exeter; Saturday, 22nd February, Bristol; Wednesday, 5th March, Winchester.

Oxford Circuit.—Mr. Justice Hawke.—Monday, 13th January, Reading; Saturday, 18th January, Oxford; Thursday, 23rd January, Worcester; Wednesday 29th, Gloucester; Wednesday, 5th February, Newport; Saturday, 15th February, Hereford; Thursday, 20th February, Shrewsbury; Thursday, 27th February, Stafford.

South-Eastern Circuit.—Mr. Justice Atkinson.—Monday, 13th January, Huntingdon; Wednesday, 15th January, Cambridge; Saturday, 25th January, Bury St. Edmunds; Friday, 31st January, Norwich; Saturday, 8th February, Chelmsford. Mr. Justice Asquith.—Tuesday, 18th February, Hertford; Saturday, 22nd February, Maidstone; Saturday, 1st March, Kingston; Tuesday, 11th March, Lewes.

Midland Circuit.—Mr. Justice Macnaghten.—Tuesday, 14th January, Aylesbury; Saturday, 18th January, Bedford; Thursday, 23rd January, Northampton; Wednesday, 29th January, Leicester; Friday, 7th February, Oakham; Saturday, 8th February, Lincoln; Tuesday, 18th February, Derby; Tuesday, 25th February, Nottingham. Mr. Justice Humphreys.—Wednesday, 5th March, Warwick. Mr. Justice Humphreys, Mr. Justice Cassels.—Monday, 10th March, Birmingham.

North Wales Circuit.—Mr. Justice Croom-Johnson.—Tuesday, 14th January, Welshpool; Monday, 20th January, Dolgelly; Thursday, 23rd January, Caernarvon; Wednesday, 29th January, Beaumaris; Saturday, 1st February, Ruthin; Friday, 7th February, Mold. Mr. Justice Croom-Johnson, Mr. Justice Lewis.—Tuesday, 11th February, Chester.

South Wales Circuit.—Mr. Justice Lewis.—Wednesday, 22nd January, Haverfordwest; Saturday, 25th January, Lampeter; Wednesday, 28th January, Carmarthen; Thursday, 6th February, Brecon; Saturday, 8th February, Presteign. Mr. Justice Croom-Johnson, Mr. Justice Lewis.—Wednesday, 26th February, Cardiff.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 23rd January, 1941.

	Div. Months.	Middle Price 8 Jan. 1941.	Flat Interest Yield.	‡ Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	110½	3 12 5	3 3 1
Consols 2½%	JAJO	77¼	3 4 6	—
War Loan 3% 1955–59	AO	101	2 19 5	2 18 2
War Loan 3½% 1952 or after	JD	103⅜	3 7 7	3 3 3
Funding 4% Loan 1960–90	MN	114	3 10 2	3 0 7
Funding 3% Loan 1959–69	AO	99½	3 0 4	3 0 6
Funding 2¾% Loan 1952–57	JD	98	2 16 1	2 18 1
Funding 2½% Loan 1956–61	AO	92¼	2 14 2	3 0 4
Victory 4% Loan Average life 21 years	MS	112¼	3 11 3	3 3 9
Conversion 5% Loan 1944–64	MN	108	4 12 7	2 10 7
Conversion 3½% Loan 1961 or after	AO	104	3 7 4	3 4 6
Conversion 3% Loan 1948–53	MS	103	2 18 3	2 9 9
Conversion 2½% Loan 1944–49	AO	100	2 10 0	2 10 0
National Defence Loan 3% 1954–58	JJ	101	2 19 5	2 18 2
Local Loans 3% Stock 1912 or after	JAJO	90	3 6 8	—
Bank Stock	AO	340½	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	90	3 6 8	—
India 4½% 1950–55	MN	109½	4 2 2	3 6 3
India 3½% 1931 or after	JAJO	97	3 12 2	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939–73 Average life 27 years	FA	109	4 2 7	3 19 0
Sudan 4% 1974 Red. in part after 1950	MN	107	3 14 9	3 3 5
Tanganyika 4% Guaranteed 1951–71	FA	109	3 13 5	2 18 11
Ion. Elec. T. F. Corpn. 2½% 1950–55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	105	3 16 2	3 10 11
Australia (Commonwealth) 3½% 1964–74	JJ	93	3 9 10	3 12 5
Australia (Commonwealth) 3% 1955–58	AO	92	3 5 3	3 12 4
*Canada 4% 1953–58	MS	112	3 11 5	2 17 7
New South Wales 3½% 1930–50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	98	3 1 3	3 10 10
Nigeria 4% 1963	AO	107	3 14 9	3 11 1
Queensland 3½% 1950–70	JJ	99	3 10 8	3 11 2
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 0
Victoria 3½% 1929–49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	81	3 14 1	—
Croydon 3% 1940–60	AO	92½	3 4 10	3 11 1
Leeds 3½% 1958–62	JJ	96	3 7 8	3 10 5
Liverpool 3¼% Redeemable by agreement with holders or by purchase	JAJO	95	3 13 8	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	85½	3 10 2	—
*London County 3½% 1954–59	FA	102	3 8 8	3 6 4
Manchester 3% 1941 or after	FA	83	3 12 3	—
Manchester 3% 1958–63	AO	83½	3 4 2	3 8 1
Metropolitan Consolidated 2½% 1920–49	MJSD	98	2 11 0	2 15 1
Met. Water Board 3% "A" 1963–2003	AO	86½	3 9 4	3 10 9
Do. do. 3% "B" 1934–2003	MS	89	3 7 5	3 8 6
Do. do. 3% "E" 1953–73	JJ	90	3 6 8	3 10 3
Middlesex County Council 3% 1961–66	MS	93	3 4 6	3 8 4
*Middlesex County Council 4½% 1950–70	MN	105	4 5 9	3 16 8
Nottingham 3% Irredeemable	MN	82	3 13 2	—
Sheffield Corporation 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	105	3 16 2	—
Great Western Rly. 4½% Debenture	JJ	113½	3 19 4	—
Great Western Rly. 5% Debenture	JJ	121½	4 2 4	—
Great Western Rly. 5% Rent Charge	FA	115½	4 6 7	—
Great Western Rly. 5% Cons. Guaranteed	MA	113	4 8 6	—
Great Western Rly. 5% Preference	MA	86	5 16 3	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.